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PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8903 GPO 00412

FILE: B-193508

DATE: January 22, 1979

MATTER OF: Lee R. Goddard - Claim for Backpay

[Denial of Claim for Additional Backpay]

DIGEST: An employee of the United States Air Force who was assigned temporary duty in Southeast Asia to perform the duties of a higher grade is entitled to a retroactive temporary promotion with accompanying backpay for the period beginning with the 121st day of his detail until the detail was terminated. However, since he was detailed to the higher grade position and not temporarily promoted he is not entitled to the higher rate of pay for the initial 120 days of that assignment.

This is in response to an appeal by Mr. Lee R. Goddard, an employee of the United States Air Force, of a settlement issued by our Claims Division on June 14, 1978, allowing only a portion of his claim for temporary promotion and accompanying backpay.

On April 26, 1972, Mr. Goddard, employed as an Aircraft Mechanic, WG-10, step 3, was assigned by Travel Order TA-2344, April 25, 1972, temporary duty in Southeast Asia as an Aircraft and Systems Overhaul Foreman, WS-9, step 1, for approximately 90 days. This period of temporary duty was extended to 179 days by amended order TA-3798, July 18, 1972. While on temporary duty Mr. Goddard performed the duties of the established higher grade. It should also be noted that an extension of time for this detail beyond 120 days as is required by Chapter 300 of the Federal Personnel Manual was not requested.

Based on our decisions in Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Matter of Marie Grant, 55 Comp. Gen. 785 (1976), our Claims Division allowed Mr. Goddard's claim for the period August 17, 1972, through October 20, 1972. Mr. Goddard contends that he should be compensated for full 179 days worked as a "Foreman."

It should be noted that in connection with this trip to Vietnam Mr. Goddard was not granted a temporary promotion to the higher grade, WS-9, step 1. The reason for this may be found in paragraph 4-3e of Chapter 335 of the Federal Personnel Manual, which states as follows:

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"e. Promotion to a higher grade for 120 days or less. An agency may make a temporary promotion limited to 120 days or less as an exception to competitive promotion procedures. This exception is not to be used to circumvent competitive promotion requirements by a series of temporary higher-level assignments. Therefore, competitive promotion procedures must be used if after completing the period of service under temporary promotion an employee will have spent more than 120 days (prior service under details and previous temporary promotions included) in high-grade positions during the preceding year." (Emphasis added.)

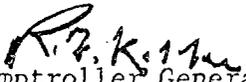
See also paragraph 4-4 of the Federal Personnel Manual. We have been advised that Mr. Goddard had a temporary promotion for 120 days effective September 26, 1971, from Aircraft Mechanic WG-10, step 3, to Aircraft Mechanic Foreman WS-9, step 1, and was demoted back to his WG-10 position effective January 24, 1972. Under the above facts and Civil Service regulation, approval of another temporary promotion within that 12-month period would have required competitive selection of the individual involved. In lieu of such procedures, which may not have permitted promotion of Mr. Goddard or may for some other reason have been infeasible the Air Force detailed Mr. Goddard to the higher grade rather than giving him a temporary promotion. Placement in a detail to a higher grade position does not entitle a person to backpay unless the requirements laid out in Turner-Caldwell, supra, have been satisfied. It is noted that claims for retroactive promotion under that decision are not subject to the competitive selection rules prescribed by the Civil Service Commission. See Federal Personnel Manual Bulletin No. 300-40, paragraph 8D.

It is unfortunate that Mr. Goddard believed that he would be compensated at the WS-9, step 1, level for the entire period in question. Our decisions, cited above, however, explicitly hold that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. The rationale for these decisions is that an agency's discretionary authority to retain an employee on

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detail continues no longer than 120 days, after which time the agency must either have obtained the approval of the Civil Service Commission or grant the employee a temporary promotion. 55 Comp. Gen. 785 (1976). Since Mr. Goddard's situation falls within the purview of our decisions, he was entitled to a temporary promotion with accompanying backpay for the period beginning with the 121st day of his detail, August 24, 1972, until the detail was terminated, October 20, 1972, and he has been paid on this basis.

However, Mr. Goddard's claim for additional backpay must be denied for the reasons stated herein. The action of our Claims Division is sustained.


Deputy Comptroller General
of the United States